

APPENDIX

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We give in this Appendix a summarized statement of the pertinent allegations of the Complaint. In that fashion we believe we will be better able to present the gist of this controversy to the Court than if the Court has to dig these matters out of the Transcript unaided by Counsel.

### **Four Specific Statutory and Constitutional Provisions.**

The petitioners in their Complaint below, rely on four separate and specific Federal statutory and constitutional provisions. First and foremost is the Federal Wartime Voting Act of 1944, already cited. That Act, of course, is the Magna Charta of Soldiers' Voting in Wartime. The purpose and design and intent of Congress in passing that Act is expressed in its Title in the following language:

#### **Act of 1944.**

"An Act to facilitate voting, in time of war, by members of the land and naval forces, members of the merchant marine, and others, absent from the place of their residence, and to amend the Act of September 16, 1942, and for other purposes."

Section 1 of that Act contains an express Federal grant of the franchise or right to vote for all elective officers of the United States in the following language:

"Sec. 1. In time of war, notwithstanding any provision of State law relating to the registration of qualified voters, every individual absent from the place of his residence and serving in the land or naval forces of the United States, including the members of the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, and the Women's Army Corps, who is or was eligible to register for and is qualified to vote at any election under the law of the State of his resi-

dence, shall be entitled, as provided in this chapter, to vote for electors of President and Vice President of the United States, United States Senators, and Representatives in Congress."

The Complaint then sets forth (as a sort of "Counter-irritant" against the idea that "States' Rights" have somehow been impinged upon by that Act) a specific provision of the 1944 Act of Congress, under which the right of any person to vote the so-called "State Ballot", provided for by the laws of his State, is fully reserved and guaranteed. (R. 8.) That provision (set out in the Complaint) reads as follows:

"Sec. 3. Nothing in this Act shall be deemed to restrict the right of any member of the armed forces of the United States, or of any other person, to vote in accordance with the law of the State of his residence."

In summary of this point of the right to vote under the Federal Wartime Voting Act of 1944 the Complaint charges that that Act

"was intended by the Congress of the United States to be, and it is, a complete and self-contained charter or grant of the right of suffrage under the Government of the United States, *so far as the elective officers of the United States only are concerned.*" (R. 8.)

#### Selective Service Act of 1940.

The second statutory provision on which petitioners rely is a specific provision which Congress wrote into the so-called Selective Service Act of 1940. (U. S. C. A., Title 50, Appendix, Sections 301, *et seq.*) That Act under which more than 10 million servicemen have been drafted into the armed forces, likewise contains a specific guaranty of the right to vote for all Federal officers at all elections; since it specifically provides in Section 8 that all persons inducted under that Act into the armed forces of the United States

“shall, during the period of said training service, be permitted to vote in person or by absentee ballot in any general, special, or primary election occurring in the State of which he is a resident, whether he is within or outside of such State at the time of such election.”  
(R. 9.)

The Complaint accordingly charges that this provision of this earlier Act of Congress was likewise intended by Congress as a guaranty that all persons summoned into the armed forces during the emergency of the war would not suffer thereby, or be restricted or hampered in their normal right to vote at all elections. (R. 10.)

**Constitutional Provision as to Senators and Representatives.**

The first Constitutional provision which the Petitioners charge has been violated by the defendant is found in the following language of Article I, Section 4 of the Federal Constitution:

“The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.”  
(R. 10.)

The Complaint specifically charges that “the right of Congress to regulate” voting for all Federal elective officers—

“• • • is guaranteed in the first instance and most fundamentally, so far as United States Senators and Representatives in Congress are concerned” (R. 10), by the above-quoted Constitutional provision. And that thereby the right to vote of all Service men to vote for Federal elective officers “is guaranteed to them (by the Constitution itself) over and above the provisions of the Federal Wartime Voting Act of 1944, and the Selective Service Act of 1940, as respectively above set forth.” (R. 11.)

**Constitutional Provision as to Federal Electors.**

The second Constitutional provision which the Petitioners charge has been violated by the defendant has to do with the right to vote for Electors for President and Vice President of the United States. Section 2 of the 14th Amendment specifically recognizes and guarantees the right of popular election for such officers by the force of the following language:

“\* \* \* the right to vote at any election for the choice of Electors for President and Vice-President of the United States, [Senators] and Representatives in Congress \* \* \* [shall not be] denied \* \* \* or in any way abridged.”

The Complaint accordingly charges that—

“Such right to vote, and the right of Congress to regulate the same is guaranteed in the first instance and most predominantly, so far as Electors for President and Vice President are concerned by the language of [that] Section.” (R. 11.)

And the Complaint further charges that Congress is given specific power to regulate and enforce the right to vote for Electors for President and Vice President by the additional language of Section 5 of the 14th Amendment, which provides that—

“The Congress shall have power to enforce by appropriate legislation the provisions of this Article.” (R. 11.)

**Summary as to Federal Right to Vote.**

Such, then, is the four-ply guarantee of the right to vote which the Complaint sets out as being guaranteed by the Federal Government to these plaintiffs, and all other persons similarly situated, in the Armed Forces of the United States during the emergency of the present global War.

**Federal Duties Imposed on State Governors.**

The Complaint then sets out (R. 13) that Section 302 of the Federal Wartime Voting Act of 1944 purports (among other things) to give the Governors of the various States of the Union certain powers and authority, *concerning the use or non-use*, in any such State of the so-called "Official Federal War Ballots" provided for by that Act. The effect of this provision is to give to one individual in each State of the Union, to wit, the Governor of that State, the power to say whether this Act of Congress, guaranteeing the right to vote to members of *the Armed forces of the United States*, shall become effective in that State or shall be totally denied and repudiated in that State. The Complaint charges (R. 22) that at the time it was filed (June 24, 1944) approximately twenty-five States of the Union had expressly taken action to validate and authorize the use of the so-called Federal War Ballots in those States; but that the defendant, purporting to act as Governor of Illinois,

"has prevented and blocked the Official Federal War Ballots from being officially recognized and accepted in the State of Illinois, and from being delivered to *any person whatsoever from that State*, at the election to be held on November 7, 1944." (R. 22.)

The Complaint charges that the defendant has refused to permit the use of the Federal Ballot in Illinois, notwithstanding the fact that under Section 303 of the Act of Congress of 1944, no Serviceman from the State of Illinois will get or will be given, by his superior officers, the Federal Ballot, unless (after October 1, 1944) he takes an oath that he has tried to get a "State Ballot," under the laws of Illinois, and has been unable to get that ballot. (R. 23.)

The provisions of the 1944 Act of Congress purporting to delegate such discretion and authority to the Governors of

the various States are set forth in the Complaint (R. 13), and are as follows :

“APPLICATION OF THIS TITLE.

SEC. 302. (a) Subject to the provisions of subsection (b), the provisions of this title shall apply with respect to the following :

(1) Members of the armed forces and the merchant marine of the United States, outside the United States.

(2) Persons serving with the American Red Cross, the Society of Friends, the Women's Auxiliary Service Pilots, and the United Service Organization, outside the United States who are attached to and serving with the armed forces of the United States.

(3) Members of the armed forces, inside the United States.

(b) The provisions of this title shall apply to, and the ballot provided for by this title may be used by—

(1) an individual referred to in paragraph (1), (2), or (3) of subsection (a), if he is a citizen of a State whose Governor has certified, prior to July 15 of the year in which the election is to be held, (A) that such State has made no provision for procedure which will enable the citizens thereof to whom subsection (a) applies to vote by State absentee ballot, and (B) that the use of ballots provided for by this title is authorized by the laws of such State; or

(2) an individual referred to in paragraph (1) or (2) of subsection (a), if he is a citizen of a State whose Governor has certified, prior to July 15 of the year in which the election is to be held, that the use of ballots provided for by this title is authorized by the laws of such State, even though the Governor thereof does not make the certification referred to in clause (A) of paragraph (1), but only if such individual states in his oath that, prior to September 1, he made application for a State absentee ballot but, as of October 1, has not received it.

No individual who is not included under paragraph (1) or (2) of this subsection shall be entitled to use, or be furnished, a ballot under this title. Certifications referred to in this subsection shall be made to the Commission."

#### **Defendant's Repudiation of Soldiers Voting Act.**

The Complaint sets out (R. 29) the telegram of the President of the United States of March 15, 1944, asking the defendant in this case about his official attitude, as Governor of Illinois, as to the "Soldiers' Voting Bill"; and also sets out the reply of the defendant, of March 17, 1944, in which the defendant said among other things (R. 30):

"The use of a supplementary Federal Ballot is not now authorized by the laws of our State \* \* \* and it would not be in the interests of those in the Armed Forces from our State for Illinois to adopt the Federal law."

The Complaint sets out that the response of the defendant shows his repudiation and rejection of the Federal Wartime Voting Act for the entire State of Illinois. (R. 20.) The Complaint further charges that the defendant's reply to the President, when read with the charges in the Complaint clearly shows "the existence and extent of the actual controversy" which exists in the State of Illinois, such as justifies the Plaintiffs in their efforts to seek relief under the Federal Declaratory Judgment Act. (R. 20.)

#### **The Practical Result in the States.**

The practical result of the enactment of the 1944 Act of Congress, and of the defendant's action, or inaction thereunder, as charged in the Complaint is that—

"More than 25 States (as of June 15, 1944) have taken [such] official steps and action \* \* \* that the Official Federal War Ballots will be recognized and ac-



cepted in those States \* \* \* and that by July 15, 1944, a very great majority of the States of the Union will have done likewise.

[But that] the defendant \* \* \* has so far prevented and blocked the State of Illinois from ranging itself on the side of the other States above mentioned and described. (R. 22.)

\* \* \* And by such arbitrary and illegal acts and doings, whether by omission or commission, the defendant will be able, illegally and without any valid right or authority whatsoever to disfranchise and prevent from voting at the said election of these plaintiffs (and all the other 30,000 and more qualified electors in Illinois similarly situated to them as above set forth) so far as the use of the Official Federal War Ballots is concerned \* \* \* unless [the plaintiffs are granted relief] in accordance with the prayer of this Complaint."

#### Authority of Federal Courts.

The Complaint sets out that under the provision of the Act of Congress last above quoted

"the said defendant is made, *ex officio and pro tanto* an officer of the United States (and not of the State of Illinois) to the extent and for the purpose and with the powers and authority last above set forth." (R. 14)

and that by reason of the premises, all authority and discretion and power of the defendant, comes from and is granted to and imposed upon the defendant by the Federal Government; and that accordingly, such authority, discretion and power so granted to the defendant may be properly and lawfully construed and interpreted by the Federal Courts under the Federal Declaratory Judgment Act.

#### Official Federal War Ballot.

The Complaint sets out the provisions in the Federal Wartime Voting Act of 1944 which authorized and guaranteed and established the so-called "Official Federal War

Ballot" and the form of that ballot is set out in full in the Complaint. (R. 15.)

The Complaint then states (R. 17) that under the provisions of the Federal Wartime Voting Act of 1944 (and under the rules and regulations with respect to said Act which have been set up and established by the Federal Authorities), *no Federal Ballots whatever will be given to or will be delivered to any member of the Armed Forces coming from Illinois*, of whom there are more than 300,000, unless and until the defendant shall file with the United States War Ballot Commission a "certificate" authorizing the use of such Federal Ballots at elections in the State of Illinois.

#### Disfranchisement of 300,000 Servicemen.

The allegations of the sworn Complaint conclude with the charge that:

"By reason of the matters and things charged in this Complaint, and specifically by reason of the arbitrary and illegal acts of the defendant, *ex officio*, as Governor of the State of Illinois therein described, these plaintiffs, (and all of the other 300,000 persons, or thereabouts, similarly situated to them as hereinbefore described, who will be lawfully entitled to vote in the State of Illinois on November 7, 1944) will be entirely disfranchised, and denied the right to vote, so far as their right to vote *for the elective Officers of the United States*, under the Constitution and Laws of the United States, and particularly under the so-called Federal Wartime Voting Act of 1944, is concerned, unless this Honorable Court shall come to the aid of these plaintiffs in the particulars asked for in the Prayer of this Complaint." (R. 24.)

Even in the oral argument, in the District Court, and in the Circuit Court of Appeals, there was no dispute of the realistic facts above charged.

### Prayer for Relief.

In drafting the Prayer for Relief of the Complaint, counsel had in mind the well-known and proper reluctance of the Federal Courts to interfere, *coercively*, with the functions of a State Governor. Accordingly the relief asked in no way calls upon the Courts to take such action. The prayer in general terms asks the Court, by declaratory judgment, proceed to settle and determine "the rights and other legal relations" of the plaintiffs and all the other persons in the armed forces similarly situated. In particular the prayer (R. 24-27) asks the Court to order and decree (in substance)—

A. That Title III of the Act of 1944, which provides for the Federal Ballot and its distribution, etc., is constitutional and valid.

B. That the right to vote granted by that Act "is dominant over and superior to" the laws of any State, so far as voting for Federal Officers are concerned.

C. That the right to vote the Federal Ballot grows out of Federal law, and cannot be limited or restricted by any State law, or any State action.

D. That so far as the laws of Illinois have any application to the Federal Ballot, they authorize and permit its use.

E. That it is the *legal duty* of the defendant as Governor of Illinois to recognize the Federal Ballot and authorize its use in that State.

Finally it is prayed that if the defendant fails to file in Washington the "Certificate" mentioned in the 1944 Act, that the Courts hold and declare that all service men in Illinois may nevertheless use and vote the Federal Ballot, in accordance with law, notwithstanding such failure of the defendant. (R. 26.)

There is also the usual prayer for "such other and further relief" as the Court sees fit to grant. (R. 27.)

**Defendant's Motion to Dismiss.**

The motion of the defendant to dismiss the cause need not be summarized here. The Court will wish to read the defendants' pleading verbatim. (R. 38 to 40.)

**The "Opinion" of the Reviewing Court.**

In the ordinary case of a Petition for Certiorari to the Circuit Court of Appeals, the Supreme Court has the benefit and information that comes from a reading of the Opinion of the Court of Appeals. In this instance however that Court affirmed the judgment of the District Court by a summary, and "*Per Curiam*" memorandum, which specifically stated that such action was taken "without opinion." (R. 68.)

**An "Abstract" of the Transcript.**

It has been our purpose, in this Appendix, to give the Court what might be fairly called an "Abstract" of the Record below, particularly of the allegations of the complaint.

We hope this "Abstract" will be found to be helpful and informative to the Court.